

Answers to the Most Common Questions about MassDEP Fees

1. What are these fees for? Are they a penalty?

Annual Compliance Assurance Fees for “21E” sites are not penalties. Fees cover a portion of MassDEP’s costs to regulate sites where there has been a release or threat of release of oil or hazardous materials. MassDEP’s regulatory activities may include site inspections, compliance monitoring and assistance, audits of reports, and enforcement actions. Fee rates are not negotiable and fees cannot be waived. Additionally, with the exception of state agencies, fees are payable by all parties, including businesses, partnerships, realty trusts, property developers, cities and towns, housing authorities, non-profits, and individuals.

2. How is the fee category determined and how many years of fees will be applicable?

The fee category is determined by the status of the site on each **Annual Status Date**, or billable year end date. The first Status Date is typically one year from initial notification. The site status is based on the Tier Classification (Tier I, Tier II or Tier ID) in effect on the status date, and can also be changed by submittals made within a year (e.g. Phase V or Temporary Solution). A fee is applicable for each year, until and including the year that a Permanent Solution is filed. Once a year is over, the fee category cannot be changed.

3. Why does the invoice show a different fee rate than the last invoice?

Most rates for Annual Compliance Assurance Fees changed in fiscal year 2014, the first change since 2003. The current fee rates for non-Homeowners are \$2,455 Tier II, \$4,320 Tier I, \$4,915 Tier ID, and \$980 for sites in Phase V or Temporary Solution status.

4. I had a Tier IB Permit in the past but my invoice shows Tier I. What changed?

Revisions to the Massachusetts Contingency Plan in 2014 streamlined the process for Tier Classification and consolidated all existing Tier IA, IB and IC sites into a Tier I category, which has a \$4,320 Annual Compliance Assurance Fee. Additionally, the initial Tier I Permit Application and the associated Permit Application Fees have been eliminated so there is only an Annual Compliance Assurance Fee for Tier I sites. MassDEP encourages parties with Tier I Classification to conduct response actions to eliminate Tier I Criteria to the extent possible and either reclassify as Tier II or get to Temporary Solution or Phase V status.

5. The site was classified as Tier II and a Permanent Solution documenting final cleanup was already submitted to MassDEP. Am I required to pay fees?

Fees are required for each year in which assessment and cleanup activities were ongoing, up to and including the year that a Permanent Solution is filed. If you believe the Permanent Solution was filed in an earlier year than the last year listed on the invoice, you may contact the MassDEP fee inquiry line listed at the bottom of the invoice notice.

6. What is the new Notice of Activity and Use Limitation (AUL) fee?

Effective June 20, 2014, a Notice of Activity and Use Limitation requires a one-time Notice of AUL fee of \$2,000 (or \$1,000 for a Homeowner). This one-time fee is independent of other Annual Compliance Assurance Fees (e.g. Tier I or Tier II fees). The fee is required to be paid when an AUL is filed prior to or concurrent with a Permanent Solution.

7. The property has been sold. Am I required to pay fees?

Fees are billed to the party who performed response actions related to the site, not necessarily the owner. If another party such as a new owner or developer intends to take responsibility for the cleanup, a Tier Classification form (BWSC-107; BWSC-107C Transfer or BWSC-107D Eligible Party) needs to be submitted. Future fees would be billed to the new party. MassDEP or a Licensed Site Professional can provide further guidance regarding a Transfer or Eligible Party submittal. An Eligible Party that files a BWSC-107D form obtains a new cleanup timeline, a new Annual Status Date and qualifies for no Annual Compliance Fee for their first year.

8. I’ve been billed fees for two Release Tracking Numbers at the same location. Can they be “linked” together?

Two or more Release Tracking Numbers (RTNs) may be linked together under a single Tier Classification to reduce future Annual Compliance Fees. This requires a Tier Classification Transmittal Form (BWSC-107) or an Immediate Response Action Completion Statement form (BWSC-105). When sites are linked, future actions must occur according to the deadlines applicable to the primary RTN (the site with the earlier initial status date). MassDEP or an LSP can provide further guidance regarding linking RTNs.

9. I am a homeowner. Can I qualify for an alternative rate?

In some instances, yes. The following Homeowners qualify for alternative fee rates: *an owner occupant of a residential one to four family structure who has provided a written certification on a Department approved form and whose structure has been used exclusively as a one to four family residence throughout his or her ownership, where the owner’s unit is the owner’s principal residence for six or more months of the year and the owner is conducting response actions at the residence in response to a release of oil.* The rates are \$1,225 per year for Tier I or Tier II status, \$490 per year for either Phase V or Temporary Solution status, and \$2,455 per year for Tier ID. Upon receipt of a completed Homeowner Certification Form (BWSC-120), the invoice would be adjusted. The BWSC-120 form is available from MassDEP or at www.mass.gov/eea/docs/dep/cleanup/approvals/bwsc-120.pdf

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10. Why does the invoice show a Credit?

Sometimes fees are mistakenly included with report submittals. If the payment wasn't applicable, a credit is entered on the invoice. Credits are most often processed when a payment is received for an inapplicable fee, such as a \$1,470 Permanent Solution fee. A "one-time" Permanent Solution fee is generally only required when the Permanent Solution is submitted prior to Tier Classification.

11. I filed a Downgradient Property Status (DPS) submittal demonstrating that the contamination migrated onto my property. Am I still subject to an Annual Compliance Fee?

If the DPS submittal is made in the first year prior to the Tier Classification deadline, a \$1,965 DPS fee is required, and the party that maintains the DPS is not subject to subsequent annual compliance fees. If the DPS submittal is made after the first year Tier Classification deadline, then an annual compliance fee is assessed for the billable year in which DPS is filed. The fee is based on the site status for that billable year. Thereafter, the party that maintains DPS is not subject to annual compliance fees.

12. Why does the invoice show a "default" or Tier ID fee?

A default Tier ID fee may be listed on the invoice if no initial Tier Classification submittal has been made to MassDEP, or if a Tier Classification or Permanent Solution submittal was not received by the classification deadline.

13. Why is there more than one fee included on the invoice?

MassDEP database information for each site is reviewed annually for billing. The review is generally conducted for the prior year, typically two to four months after the "billable year" is over. During this review, if the record shows a Permanent Solution was filed after the year under review, the final year is included because response actions have been completed and the fee category for the final year will not change. If this poses a financial hardship, an extended payment arrangement may be requested prior to the due date.

14. What if the invoice cannot be paid in full by the due date because of a financial hardship?

In cases of severe financial hardship MassDEP will consider entering into an extended payment arrangement. Please refer to the Statement of Billing Rights included with the invoice for additional information regarding financial hardship. You may also contact your Licensed Site Professional (LSP) or MassDEP to learn whether future fees will be applicable.

15. How can I reduce the amount of future fees?

If you have not filed a Permanent Solution you may be able to reduce future fees that may be applicable for your site. You should ask your Licensed Site Professional whether any of the following are applicable.

- **Reclassification:** Downgrades your site from the current classification (e.g. Tier I, Tier ID) to a classification with a lower fee (e.g. Tier II); submit a reclassification form at any time prior to or concurrent with a Permanent Solution;
- **Permanent Solution:** File a Permanent Solution Statement; an Annual Compliance Fee is billed up to and including the year that a Permanent Solution is submitted to MassDEP;
- **Implement Phase V:** Once Phase IV cleanup actions have been completed and Phase V activities (Operation, Maintenance or Monitoring) are being performed, you qualify for the Phase V fee rate of \$980 per year;
- **Temporary Solution:** File a Temporary Solution Statement; fee category changes to Temporary Solution of \$980 per year;
- **Homeowner Certification:** Submit a Homeowner Certification Form as described in Question 9, if applicable.

Common Terms & Acronyms:

ACF – Annual Compliance Assurance Fee

AUL – Activity and Use Limitation

BWSC – Bureau of Waste Site Cleanup

Default Site – Tier Classification deadline was not met and site was classified by default as Tier ID

DPS – Downgradient Property Status; submittal that documents contamination that has migrated from one property to another

LSP – Licensed Site Professional; oversees assessment and cleanup activities in Massachusetts

MassDEP – Massachusetts Department of Environmental Protection

MCP – Massachusetts Contingency Plan, 310 CMR 40.0000; state regulations that govern site assessment and cleanup

M.G.L. Chapter 21E – Massachusetts General Law Chapter 21E; governs cleanup of oil and hazardous waste sites and spills

Permanent Solution – typically the final report documenting a site cleanup

RTN – Release Tracking Number; assigned to each report of a release or threat-of-release of oil or hazardous materials

Status Date – The date used for billing Annual Compliance Assurance Fees, generally one year from initial notification and each year thereafter

Temporary Solution – a milestone that may be achieved after completing Phase III (formerly Class C Response Action Outcome)

Tier Classification – Used to classify each disposal site and determine the applicable fee category for each year

Mail payments with the invoice stub to: Commonwealth of Massachusetts, PO Box 3982, Boston MA 02241-3982.

MassDEP Website: <http://www.mass.gov/eea/agencies/massdep/cleanup/>
